deceased husband, and the only damage alleged was the mental anguish and the nervous shock. The demurrer, argued on the ground that the widow had no property and no legal interest in the corpse, and that the mental suffering was no ground of action, was overruled, and the decision is supported on appeal. The common-law doctrine, that no one had any rights in a dead body, has now been, says Judge Mitchell, thoroughly repudiated by the American courts, whose lack of ecclesiastical law left the temporal courts the sole protectors of the dead, and of the interest of the living in their dead. The whole subject is much confused by the technical discussion as to whether a corpse is property in the commercial sense, and, as the court points out, the discussion of that question is entirely unnecessary to the decision of this. The important fact is that the nearest family representative has a legal right to the body for the purpose of burial, and the disturbance of that right, like the disturbance of any other right recognized by the law, is a subject for compensation.

Having stated thus broadly the cause of action, the court points out that the confusion on the subject of damages grows out of the common error of failing to distinguish an element of damage from a cause of action, as is shown by the frequent misuse of the leading case of *Lynch* v. *Knight*, which is well discussed by Judge Mitchell. Once given your cause of action, damages cover much that, standing alone, would form no ground of recovery.

In thus making the right infringed a branch of the right to undisturbed family relations, and so avoiding the vexed question of property, and in supporting it by reference to cases where substantial damages have been given for an assault without physical contact, and for false imprisonment without contact, to which might be added the case of recovery by a husband for an attack on his wife where there was no loss of service, the court follows directly the line of argument used in the discussion of the growth in this branch of the law in the last edition of Sedgwick on Damages. Certainly it is a more satisfactory explanation of a right that every one feels must exist; and, as the court says, it is much more satisfactory to our common sense, as well as to our feelings, to base the recovery on a right connected directly with the real and substantial wrong than on a technical and dimly understood right of property.

Political Assessments. — The *United States* v. *Newton*, a case interesting from its bearing on the civil-service reform question, has lately been decided in the Supreme Court of the District of Columbia. The defendant was indicted under section 12 of the Civil-Service Act, which provides in effect that no one shall solicit or receive any contribution for political purposes in any room or building occupied in the discharge of official duties by any officer or employé of the United States. The defendant had sent letters to various persons in government buildings, referring to the State campaign in Virginia, requesting such persons to join the Republican Club and "to make such further contribution as your means will permit." The indictment did not allege that the persons solicited were government employés. On this ground the defendant demurred, and also argued that the act was unconstitutional, as infringing the rights of the citizen. The demurrer was overruled, the court saying that the right to forbid the levying of political assessments in public buildings was clearly within the power

of Congress. The court ruled also that the indictment was sufficient. Another section of the act mentioned particularly public employés. The fact that they were not mentioned in the section on which the indictment was based, the court said, was conclusive proof that the act was intended to apply to all persons who happened to be within public buildings, whether employed there or not. It was therefore immaterial to allege that the solicitation was made to government employés.

It might perhaps be suggested that Congress did not intend to protect mere strangers in the government buildings from annoyance, and that the omission to insert the words "government employés" in this section of the act was unintentional. Certainly the object for which the act was passed would be fully satisfied by that construction. In this case of course the demurrer should have succeeded, as the offence aimed at by the statute was not set out. The result reached, however, is eminently satisfactory from a practical standpoint, for it will give the greatest possible efficiency to a useful law.

WEAVERS' FINES ACT DECLARED UNCONSTITUTIONAL. — The recent decision[1] of the Supreme Court of Massachusetts declaring unconstitutional the "Weavers' Fines Act," passed by the State Legislature of 1891, is noteworthy, as giving a narrow interpretation of the constitutional power to make "all manner of wholesome and reasonable orders . . . not repugnant to the Constitution . . . for the good and welfare" of the public. The act in question is as follows: "No employer shall impose a fine upon or withhold the wages, or any part of the wages, of an employé engaged at weaving, for imperfections that may arise during the process of weaving." The view of the court is that the act is unconstitutional, in that it interferes with the inalienable right of "acquiring, possessing, and protecting property" guaranteed by the State Constitution, by restricting the necessarily incidental right to make reasonable contracts, and in that it impairs the obligation of contracts within the meaning of the Federal Constitution. The court admits that the Legislature, if it should "determine it to be for the best interests of the people that a certain class of employés should not be permitted to subject themselves to an arbitrary imposition of a fine or penalty by their employer, might pass a law to that effect." But they say, "When the attempt is to compel payment under a contract of the price for good work when only inferior work is done, a different question is presented." They find a practical argument in support of their view, in the fact that a suit for damages against the employé for breach of contract would in most cases be of no value to the employer.

Judge Holmes alone dissents from the opinion of the majority and holds the act constitutional. He denies that it in any way impairs the obligation of contracts, for the simple reason that its operation is prospective, and it can scarcely be said to impair the obligation of contracts made after its passage. Nor does it interfere with the right of "acquiring, possessing, and protecting property," any more than the laws against usury or gaming. It is a fair assumption that the act was passed to protect employés from being "often cheated out of a part of their wages under a false pretence that the work done was imperfect."

[1] *Com.* v. *Perry*, 28 N. E. Rep. 1126.